

1 hearing before the Honorable Magistrate Judge Cam Ferenbach on April 8, 2019, at 10:00 a.m.
2 The Court, having considered the papers and pleadings submitted in support of the Motion,
3 HEREBY ORDERS AS FOLLOWS:

4 1. The Court grants the Motion based upon the terms set forth in the Settlement
5 Agreement and Release ("Settlement") between Plaintiffs and Defendant.

6 2. This Court has jurisdiction over the subject matter of this litigation and all matters
7 relating thereto, including Plaintiffs, all settlement class members, and Defendant.

8 3. Pursuant to 29 U.S.C. § 216, the Court certifies as final, for purposes of settlement
9 only, a collective action under the Fair Labor Standards Act ("FLSA"). The class shall consist of
10 Plaintiff Charles Grahl and all Opt-In Plaintiffs who worked as a Store Manager for Circle K Stores,
11 Inc., between October 31, 2011, to May 11, 2016; timely filed valid opt-in Forms, as defined in
12 the Settlement, before May 11, 2016, and filed valid Claims Forms on or before March 25, 2019
13 pursuant to this Court's Order Granting Preliminary Settlement Approval.

14 4. The Parties Settlement in the amount of Eight Million Two Hundred and Fifty
15 Thousand Dollars and Zero Cents (\$8,250,000.00) is the product of contested litigation to resolve
16 *bona fide* disputes over the availability and amount of overtime wages.

17 5. The Court finds that the Settlement appears to be fair, adequate, and a reasonable
18 resolution of the litigation. The non-exhaustive list of factors courts typically consider in
19 evaluating a proposed settlement for fairness include: (1) the strength of plaintiffs' case; (2) the
20 risk, expense, complexity, and likely duration of further litigation; (3) the extent of the discovery
21 completed; (4) the stage of the proceedings; and (5) the experience and views of counsel. *Trinh*
22 *v. JP Morgan Chase & Co.*, 2009 WL 532556 at *1 (citing *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d
23 1370, 1375 (9th Cir. 1993)). Here, the Court agrees that the application of these factors confirms
24 that the Settlement constitutes a fair and reasonable compromise of the Parties' *bona fide*
25 disputes. The Settlement falls within the range of reasonableness and appears to be
26 presumptively valid.

27 6. As ordered by this Court, on January 24, 2019, Simpluris, the Claims Administrator,

1 mailed out Notices of Settlement and Claims Forms to Class Members. On February 22, 2019, the
2 Claims Administrator mailed reminder postcards to those Class Members who had not yet
3 submitted a Claim Form.

4 7. As of March 25, 2019, the Claim Deadline, the Claims Administrator reported
5 receipt of 805 Claim Forms, representing a return rate of 76.73%.

6 8. Of the 805 forms received, 802 were valid Claim Forms.

7 9. No Class Members objected to the Settlement.

8 10. The 802 participating Class Members will be paid their portion of the Net
9 Settlement Fund, estimated to be \$4,415,757.88.

10 11. Consistent with the Parties' Settlement, the National Park Foundation will receive
11 \$513,528.46 and Children's Miracle Network Hospitals will receive \$513,528.46 from the Net
12 Settlement Fund.

13 12. The court appoints Charles Grahl as Class Representative and approves an award
14 of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to Grahl for his services as Class
15 Representative in this matter.

16 13. The Court appoints Joseph N. Mott and Scott E. Lundy, of Rempfer Mott Lundy,
17 PLLC, as Class Counsel.

18 14. Plaintiffs' request for Class Counsels' fees in the amount of Two Million Seven
19 Hundred Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$2,722,500.00) is
20 reasonable. This amount represents 33.33% of the Gross Settlement Fund. "The typical range of
21 acceptable attorneys' fees in the Ninth Circuit is 20 percent to 33.3 percent of the total
22 settlement value with 25 percent considered a benchmark percentage." *Barbosa v. Cargill Meat*
23 *Sol. Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th
24 Cir. 2000)). "In assessing whether the percentage requested is fair and reasonable, courts
25 generally consider the following factors: (1) the results achieved; (2) the risk of litigation; (3) the
26 skill required; (4) the quality of work performed; (5) the contingent nature of the fee and the
27 financial burden; and (6) the awards made in similar cases." *Sinanyan v. Luxury Suites Int'l, LLC*,

1 2018 U.S. Dist. LEXIS 21403, at * 11 (D. Nev. Feb. 8, 2018) (citing *Vizcaino v. Microsoft Corp.*, 290
2 F.3d 1043, 1047-50 (9th Cir. 2002)). Having considered these factors, the Court finds the request
3 for Class Counsels' fees in the amount of \$2,722,500.00 to be reasonable.

4 15. The Court finds Plaintiffs' request for Class Counsels' costs in the amount of Forty-
5 Nine Thousand Seven Hundred Eighty-Five Dollars and Twenty-One Cents (\$49,785.21) is fair,
6 adequate, and reasonable. This amount consists of the following:

- 7 A. Three Thousand Seven Hundred Fifty-Four Dollars and Thirty-Eight Cents
8 (\$3,754.38) to Tostrud Law Group, P.C., for hard ~~costs~~ ^{costs};
- 9 B. Nine Thousand, Six Hundred Fifty-Two Dollars and Twenty-Seven Cents
10 (\$9,652.27) to Cogburn Law Offices for hard costs and mediation fees;
- 11 C. Sixteen Thousand Four Hundred Seventy-Eight Dollars and Fifty-Six Cents
12 (\$16,478.56) to Rempfer Mott Lundy, PLLC, for deposition costs and initial
13 class notice administration costs; and ^{Nine Hundred} ~~\$19,000.00~~ ^{\$19,900.00}
- 14 D. Nineteen Thousand [↑] Dollars and Zero Cents (~~\$19,000.00~~) to Simpluris for
15 claims administration.

16 16. The Court directs the Parties and Claims Administrator to effectuate the
17 settlement terms as set forth in the Settlement.

18 17. Having found this amount to be reasonable, the Court directs Defendant to submit
19 settlement proceeds in the total amount of \$8,250,000.00 to the Claims Administrator on or
20 before Tuesday, April 30, 2019.

21 18. The Court directs the Claims Administrator to pay Class Counsel fees and costs in
22 the amount of \$2,722,500.00 and \$49,785.21, respectively, on or before Friday, May 3, 2019.

23 19. The Court directs the Claims Administrator to issue payment to the Settlement
24 Class Members on or before Friday, May 24, 2019.

25 20. The Court directs the Claims Administrator to distribute all remaining Settlement
26 funds equally to counsel for Plaintiffs and counsel for Defendant to be issued to the National Park
27 Foundation (in the amount of \$513,528.46) and the Children's Miracle Network Hospitals (in the

1 amount of \$513,528.46) in accordance with the Settlement Agreement and this Order.

2 21. This action is dismissed with prejudice.

3 22. The Court retains jurisdiction to enforce the terms of the Settlement.

4 Dated: Monday, April 8, 2019.

5 REMPFER MOTT LUNDY, PLLC

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

6
7 /s/ Joseph N. Mott

Joseph N. Mott

8 Nevada Bar No. 12455

Scott E. Lundy

9 Nevada Bar No. 14235

10 Attorneys for Plaintiff

CHARLES GRAHL

/s/ Dana B. Salmonson

Anthony L. Martin

Nevada Bar No. 8177

Dana B. Salmonson

Nevada Bar No. 11180

Attorneys for Defendant

CIRCLE K STORES, INC.

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ORDER

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IT IS SO ORDERED.

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The Clerk of Court is directed to close
the file.

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CAM FERENBACH

UNITED STATES MAGISTRATE JUDGE

17

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April 8, 2019

DATED: _____

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